



Victor M. Sher  
[vsher@sherleff.com](mailto:vsher@sherleff.com)  
415.348.8300 x100

October 12, 2009

**Via Email and Hand Delivery**

Hon. Shira A. Scheindlin  
United States District Judge  
U.S. District Court, Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *City of New York v. ExxonMobil*, 04 CV 3417 (SDNY)  
Proffer of Evidence in Support of the City's Punitive Damages Claim

Dear Judge Scheindlin:

In response to your request for citations to evidence admitted in Phase III that would support a finding that ExxonMobil's conduct that resulted in injury to the City was either malicious or wanton and reckless, the City submits the attached indices to Phase III testimony, organized by date, page and line, and witness name (Exhibit 1), and to Phase III documents, listed in order by the date they were admitted into evidence (Exhibit 2).

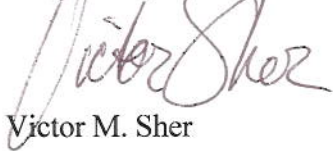
The City will deliver to the Court this afternoon hard copies of each page of testimony referred to in Exhibit 1 and each of plaintiff's exhibits cited in Exhibit 2.

In presenting evidence to support such a finding during Phase IV of this case, the City intends to offer the additional evidence cited in its October 8, 2009 letter to the Court proffering punitive damages evidence, incorporated herein by reference. The City reserves the right to supplement the evidence described above with other evidence in the record, including evidence entered during Phase II, and evidence that has not yet been entered. For example, the City intends to refer during Phase IV to documents currently listed on its exhibit list as PL-3138 and 3139 (June 2000 ExxonMobil MTBE phasedown position approved by CEO).

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We appreciate the Court's time and attention to this matter and respectfully ask that this letter be filed with the Clerk's Offices so that it is part of the trial record for this case.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Victor Sher", is written over the typed name. The signature is fluid and cursive.

Victor M. Sher

Cc: All Counsel via LNFS & Email